

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCOS L MUSQUEZ,	)	
	)	
Plaintiff(s),	)	No C 07-5966 VRW (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
D SEPULVEDA, et al,	)	
	)	
Defendant(s).	)	
_____	)	

Plaintiff, a prisoner at the Santa Clara County Jail and frequent litigant in this court, filed a pro se complaint under 42 USC § 1983 alleging that he has not received all of his "duly authorized" mail, including several issues of his USA Today newspaper and tattoo magazines. Plaintiff also alleged that his outgoing mail has been delayed without cause.

Per order filed on March 25, 2008, the court explained that although prisoners enjoy a First Amendment right to send and receive mail, isolated incidents of mail interference without any evidence of improper motive or resulting interference with the right to counsel or access to the courts do not give rise to a constitutional violation. Mar 25, 2008 Order at 2 (citing Crofton v Roe, 170 F3d 957, 961 (9th Cir 1999), and Smith v Maschner, 899 F2d 940, 944 (10th Cir 1990)). The court dismissed the complaint with leave to amend to allege, if possible, specific facts showing that the missing newspaper/magazine issues and mail delay have amounted to more than isolated incidents of mail interference. Id. Plaintiff was also instructed to link each named defendant to his allegations

1 of wrongdoing – he must allege specific facts showing how each defendant  
2 actually and proximately caused the deprivation of his First Amendment rights.  
3 Id (citing Leer v Murphy, 844 F2d 628, 634 (9th Cir 1988)).

4 Plaintiff has filed a First Amended Complaint ("FAC") again alleging in a  
5 conclusory fashion that defendants interfered with this incoming and outgoing  
6 mail. The only specifics are found in the administrative grievances attached to  
7 the FAC, which indicate that in the twelve months preceding the filing of this  
8 action on November 27, 2007, plaintiff did not receive his daily USA Today  
9 newspaper and tattoo magazines on a handful of occasions, and did not receive  
10 his frequent mail from this court on one occasion.<sup>1</sup> Although unfortunate, these  
11 few instances of lost mail do not amount to more than isolated incidents  
12 insufficient to state a First Amendment claim of mail interference. See Smith,  
13 899 F2d at 944. After all, plaintiff's attached grievances make clear that his First  
14 Amendment claim is based solely on his assumption that, if he did not receive a  
15 particular piece of mail, one of the mailroom officers must have destroyed it.

16 For the foregoing reasons, the FAC is dismissed for failure to state a claim  
17 under the authority of 28 USC § 1915A(b). The clerk is instructed to enter  
18 judgment in accordance with this order and close the file.

19 SO ORDERED.



20 VAUGHN R WALKER  
21 United States District Chief Judge

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24 <sup>1</sup>Plaintiff also attaches recent administrative grievances alleging that he did not  
25 receive his Mercury News newspaper several times in 2008. Plaintiff must exhaust  
26 these recent claims before bringing them to federal court. See McKinney v Carey, 311  
27 F3d 1198, 1199 (9th Cir 2002) (action/claim must be dismissed unless prisoner  
28 exhausted available administrative remedies before he filed suit, even if prisoner fully  
exhausts while suit is pending).